Filed 10/10/02 In re N. S. CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re N.S., a Person Coming Under the Juvenile Court Law.	
FRESNO COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. BRENT S., Defendant and Appellant.	F039957 (Super. Ct. No. 96902-2) **O P I N I O N**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Fresno County. Martin C. Suits, Judge.

David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

Phillip S. Cronin, County Counsel, and Nannette J. Stomberg, Deputy County Counsel, for Plaintiff and Respondent.

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[*] Before Vartabedian, Acting P.J., Cornell, J., and Gomes, J.

Brent S. appeals from an order terminating his parental rights (Welf. & Inst. Code, § 366.26) to his daughter, N.S.[1] Appellant first received notice of the dependency proceedings approximately three months before the originally scheduled section 366.26 hearing. Further complicating matters, since the outset of the case, respondent Fresno County Department of Children and Family Services (the Department) characterized appellant as N.S.'s alleged father. Despite serious questions of whether appellant's due process rights had been violated and whether he was entitled to presumed father status, the court proceeded with its termination order. Appellant places the blame alternatively on N.S.'s mother, the Department, the court, and his trial counsel. On review, we conclude it was error to proceed with the termination hearing and will reverse with directions.

PROCEDURAL AND FACTUAL HISTORY

In July 2000, the Department detained four-year-old N.S. after her mother was hospitalized on a Penal Code section 5150 hold. The Department in turn petitioned the juvenile court to exercise its dependency jurisdiction (§ 300, subd. (b)) over N.S. based on the mother's mental health and substance abuse problems. On the face of its petition, the Department identified appellant as N.S.'s father, checked a box for address "unknown" and placed a question mark in a box marked "alleged."

Neither at the initial detention hearing nor at any subsequent hearing did the trial court make any inquiry of the mother as to the identity and address of all alleged and presumed fathers as required under section 316.2, subdivision (a).[2] There is also nothing

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[1] All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] Section 316.2, subdivision (a) provides:

> "(a) At the detention hearing, or as soon thereafter as practicable, the court shall inquire of the mother and any other appropriate person as to the identity and address of all presumed or alleged fathers. The presence at the

in the record to indicate what inquiry the Department made of the mother with regard to appellant.

What the record does reveal, however, is that the Department initiated a search for appellant on July 20, 2000. According to a form declaration of search dated August 3, 2000, the following records were searched: "DDS Records, Family Support, Polk Directory, Sheriff Records, County Jail, Prison Locator, Fresno telephone books, Adult Probation, Register of Voters, Personal Property Rolls, SS/SSI Records, and MEDS." Checkmarks indicating "Yes" to the word "Located" were typed in the boxes for Family Support, Sheriff Records and Adult Probation. There was no indication, however, as to what information was located. In addition, the declaration states:

> "According to the Family Support Division, a letter was mailed to [a Vancouver, Washington address]. This address has been bad since March 1, 2000. Letters have been mailed to varies [*sic*] agency requesting search

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> hearing of a man claiming to be the father shall not relieve the court of its duty of inquiry. The inquiry shall include at least all of the following, as the court deems appropriate:
>
> "(1) Whether a judgment of paternity already exists.
>
> "(2) Whether the mother was married or believed she was married at the time of conception of the child or at any time thereafter.
>
> "(3) Whether the mother was cohabiting with a man at the time of conception or birth of the child.
>
> "(4) Whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy.
>
> "(5) Whether any man has formally or informally acknowledged or declared his possible paternity of the child, including by signing a voluntary declaration of paternity.
>
> "(6) Whether paternity tests have been administered and the results, if any.
>
> "(7) Whether any man otherwise qualifies as a presumed father pursuant to Section 7611, or any other provision, of the Family Code."

> of records for Mr. [S.] A letter has been mailed to the State of Washington Department of Social Health Services [in Olympia]. Another letter was mailed to the State of Washington Children's Administration [in Olympia]. The last letter was mailed to the State of Washington Department of Corrections [in Seattle]. As to [*sic*] the writing of this report, Brent [S.] has not responded to the letter mailed to him by the Department."

As to this last quoted sentence, there is no explanation in the record about the contents of the letter or the address to which the letter was addressed. Also, the declarant left blank the space below pre-printed language that stated "[t]he following attempts were made to locate the party through relatives, friends or others likely to know the present whereabouts of the party."

In its social study for the dispositional hearing, the Department reported the mother was unable to provide information on how to locate appellant. She thought he might be living in Washington. The juvenile court then, in November 2000, adjudged N.S. a dependent child and removed her from parental custody. Although it ordered reunification services for the mother, the court denied appellant services by virtue of his alleged father status (§ 361.5, subd. (a)). The court made no finding at this or any prior hearing that appellant's whereabouts were unknown or that the Department made a diligent search for appellant.

After six months of unsuccessful reunification services, the mother expressed a willingness to forego further efforts to reunify with N.S. She also supported her father's request for N.S.'s placement with him and his wife in their Wyoming home. The Department in the meanwhile initiated a request for an Interstate Compact for Placement of Children (ICPC) evaluation with the State of Wyoming.

At a six-month review hearing conducted in June 2001, the court terminated reunification services and set the case for a section 366.26 hearing. It also authorized respondent to serve appellant with notice of the section 366.26 hearing by publication. Notably, although its social worker claimed that a "Parent Search" was recently completed and appellant's whereabouts were unknown, the Department did not produce a

declaration of search in support of its claim. The social worker also reported there was no identifying information to locate appellant.

Then, on July 13, 2001, a Department social worker received a telephone call from appellant. He reported he had received a letter about N.S. and child support and in the process learned for the first time that she was a juvenile dependent, placed in foster care. The record does not reveal the identity of the letter's author or the contents of the letter. County counsel later argued the family support division apparently of the Fresno County District Attorney's Office sent the letter. The letter was mailed to appellant at his father's house in Washington state.

Appellant acknowledged in the July 13th conversation that he had not seen N.S. "'for so long,'" since she was about two when she lived with him for approximately three months. According to appellant, N.S.'s mother, whom he described as "'really weird' [and] 'pretty crazy,'" had run away. She would call and tell him he would never see N.S. again. Claiming that the mother despised him and should have just called him, appellant said he felt "bad that I have to fight for my daughter now."

Having only recently been assigned the case, the social worker promised to call appellant in a week after she reviewed the case. The social worker did inform appellant of the scheduled section 366.26 hearing. However, she gave him the wrong hearing date. She also advised him to "show up" for the hearing. Appellant gave her his address and phone number in Vancouver, Washington.

Approximately a week later, the social worker had another telephone conversation with appellant. She informed him of when N.S. was detained and the fact that the court did not order services for him because he was an alleged father. Appellant repeatedly stated he was N.S.'s father. According to appellant, his name was on her birth certificate and he would do "'whatever to prove that.'" He wanted N.S., whom he said he loved, to be placed with him.

The social worker explained to appellant that N.S.'s case was "in the process of [adoption] assessment." She added she needed to consult with N.S.'s therapist about appellant having contact with N.S. since, according to appellant, he had not had a relationship with her since she was about two. Appellant volunteered he "'should never let her mother get [N.S.]'" and reiterated he was going to fight for his daughter.

Although the social worker promised to get back to appellant, she did not do so. Instead, in early August appellant once again called the social worker asking when he could call his daughter. The social worker replied she had not heard from the therapist as yet. Appellant became upset, urging he was N.S.'s father and asking why did he not have rights. The social worker reiterated her need to talk to the therapist because N.S. had been having problems after talking to her mother.

Appellant questioned why the Department did not give N.S. to him since he was not "the one that got [her] into the system." As the social worker tried to explain the dependency process to appellant, he became angry "about how we (Dept) didn't look for him until it was too late for him." By this time in early August, respondent had formally served appellant with correct notice of the section 366.26 hearing. He told the social worker that the mother knew where he was and did not tell the social worker. The social worker responded by trying to explain a parent search to appellant but he again became upset.

Appellant complained he was not given a chance with N.S. while the mother, who in his estimation was mentally disturbed, was. He again complained of how the mother ran away with N.S. and away from him. He added he and N.S.'s grandparents missed her and loved her. He apologized to the social worker for "'being a jerk'" and thanked her for not hanging up on him. She told him she would contact him when she heard from the therapist.

These three conversations were detailed in social worker narratives and brought to the court's attention at a hearing in late September 2001. Respondent had petitioned to

terminate visits between N.S. and her mother. Meanwhile, the court had requested an update on the ICPC process. During the hearing, county counsel asked if appellant had been noticed for the hearing that day. He had not. County counsel and counsel for the mother agreed appellant had been requesting services, placement and contact with N.S. and yet, as county counsel acknowledged:

> "we're looking at the child [who] is not a permanent placement, we're looking at an ICPC to send the child out of state and we're ignoring this father[.]"

County counsel also admitted the narratives showed that appellant only became aware N.S. was:

> "in the system in July when he was contacted by Family Support and that he's been asking for contact and the social worker apperas [*sic*] to have been putting him off saying that she's going to check with the therapist. I don't see where she ever checked with the therapist or ever got back to him[.]"

Counsel for the mother advised the court that she did not support the father having contact with N.S. and urged the court to place her with the grandfather in Wyoming. The mother did personally admit to the court that appellant's name was on N.S.'s birth certificate. Nevertheless, she was apparently opposed to appellant obtaining presumed father status.

Observing it was not his job to argue whether appellant was a presumed or alleged father, county counsel advocated against relying on the mother's representations and renewed the question of exploring appellant and his standing. The court eventually responded by appointing counsel for appellant, facilitating transportation for him and continuing the matter to the October date set for the section 366.26 hearing.

Appellant appeared for the first time in these proceedings at the October hearing. Because his attorney had not received discovery and was unfamiliar with the record, the court continued the hearing to November 2, 2001. At the continued hearing, substitute counsel sat in for appellant's attorney who was absent. Respondent recommended the

court find N.S. adoptable based on the grandfather's desire to adopt her and terminate parental rights. When appellant personally objected claiming "they didn't contact me in time," county counsel urged that "we need something from the father indicating what the issues are so we can respond." County counsel was prepared to proceed with a termination hearing. After further discussion, the court continued the matter once again, stating it would proceed on the continued date with the termination hearing unless counsel for appellant filed a motion to set aside based upon inappropriate notice. In turn, the court ordered a briefing schedule, a statement of contested issues and discovery on the issue of notice.

In time for the continued hearing date, respondent filed a supplemental report regarding, in relevant part, its efforts to notify appellant of these proceedings. It summarized the search it conducted in July 2000. It also reported the social worker "submitted a parent search" which was completed within a matter of days in November 2000 and June 2001. There was no indication in the supplemental report as to what the words "submitted a parent search" entailed in each instance. At most, the Department offered what records are ordinarily searched. Missing were declarations or other evidence of what parent searches were in fact conducted in N.S.'s case. In addition, as had happened in July 2000, the Department again sent letters to multiple agencies in Washington state. In response to the November 2000 letters, the Washington agencies reported having no record of appellant's whereabouts. The June letters, on the other hand, finally led to the Department's acquisition of appellant's address. Notably, however, the Department apparently made no effort to serve him with notice as of the following month when he called the social worker.

Counsel for appellant, meanwhile, did not file either a motion to set aside or a petition for modification under section 388. At the eventual hearing in December 2001, the court permitted some testimony by appellant related to notice and N.S.'s parentage.

On the issue of notice, appellant testified he had lived all his life in the Camas/Vancouver area of Washington state. His employment, first as a carnival worker and for the last two years as a union laborer, kept him on the road much of the time. Nevertheless, he considered the Camas/Vancouver area to be his "home base." For at least the last 12 years, his family, first his grandparents and later his father, owned the same residence. He also considered that residence to be his mailing address. He had taken N.S.'s mother there for Christmas visits and dinner in years past.

N.S.'s mother maintained telephone contact with appellant's grandmother between 1996 and 1999. Even after the grandparents transferred ownership of the family home to appellant's father and moved elsewhere, N.S.'s mother still maintained contact with appellant's grandmother. This was how she reached appellant in 1999 asking for help with N.S. Appellant in turn came to pick up N.S. at the bus station in Fresno and brought her to live with him in his grandmother's home in the Camas/Vancouver area. The mother later took N.S. back, by traveling to the grandparents's home.

On the issue of paternity, appellant testified he and the mother lived together for the year prior to N.S.'s birth. Although appellant was not present at the child's birth, his absence was not of his making. Rather, the mother ran off the month before N.S.'s birth and disappeared. Nevertheless, she named appellant as the child's father on the birth certificate and, two and a half months later when the mother needed help, she contacted appellant to care for her and N.S. He traveled to Imperial, California, near where N.S. was born, and brought the mother and N.S. to Fresno where he was then working in a carnival. Once in Fresno, appellant lived with N.S. and the mother, worked at the carnival to support N.S., and thought he and the mother had reconciled. However, two weeks later, the mother again left appellant and took N.S. to Imperial. Another time, when N.S. was approximately 11 months old, the mother reported to appellant that the person she was living with beat her and she had nowhere to stay. Appellant paid for a bus ticket for the mother and N.S. to travel and stay with the sister of appellant's current

girlfriend. Appellant also paid part of the mother's and N.S.'s rent. Once again, at some point, the mother left with N.S. and appellant lost track of them

Then, in the summer of 1999, a year before the Department initially detained N.S., the mother telephoned appellant's grandmother. The mother said she could not take care of N.S. at that time. Apparently, part of the mother's problem then related to drug abuse. When he received word of the mother's predicament, appellant, who wanted to have N.S. with him, traveled to Fresno to pick up the child and bring her to Vancouver. The child then spent two to three months living with appellant in his grandmother's house. At some point in the summer of 1999 while N.S. lived with appellant, she became ill. Appellant sought medical care for her, going so far as to enroll the child with the State of Washington for medical benefits. He even considered going to court in Washington to get a custody order.

However, the mother traveled to Washington to take back N.S. When the mother arrived in the Camas/Vancouver area, she appeared to appellant as though she "wasn't skinny anymore" and "quit doing the dope." Appellant decided not to pursue custody proceedings because he thought the mother loved N.S. and returning N.S. to the mother's care "would be the right thing to do." He acknowledged that at the time he could not take care of N.S. "that well" although his grandmother offered to help him. Nevertheless, he "figured [N.S.'s mother] was telling the truth" apparently about not using drugs. The mother then returned to Fresno with N.S.

A month or two later, the mother contacted appellant saying she wanted $10,000 and if he did not give her money, N.S. was not going to see him. Appellant refused. Parenthetically, he admitted he never paid child support for N.S. Appellant heard nothing further from the mother following that conversation. He did not know where she was then because the mother told him different stories about where she was going or leaving.

He admitted he did not make many efforts to find N.S. and the mother. At some undisclosed time, he knew acquaintances of his had seen the mother at the Fresno Fair.

However, he did not go to Fresno then because he knew he could be arrested. In fact, when appellant first appeared in October 2001 for these proceedings, he was arrested for a probation violation. Apparently, five years earlier, he had committed what he termed "spousal abuse" involving N.S.'s mother. At some point, he pled guilty.

In the midst of appellant's cross-examination, county counsel objected to further testimony. He argued the issues of notice and parentage were irrelevant because counsel did not file any pleadings articulating the disputed issues or citing authority for her position that appellant was entitled to relief. This led to considerable argument amongst the parties and the court. The court, for its part, did not rule on the relevance objection but did appear to agree with county counsel. Appellant's trial counsel reminded the court that she had not been present at the last hearing and was unaware the court had required her to file any pleadings. She argued everyone knew what the issues were: notice and paternity. The notice issue to her mind was "so obvious." The court disagreed. The court subsequently admitted the narratives of the three conversations appellant had with the social worker in July and August. After closing arguments, the court found N.S. adoptable and terminated parental rights.

DISCUSSION

I. *Introduction*

Appellant contends the juvenile court, instead of terminating his parental rights, should have granted him presumed father status and reunification services. Alternatively, he claims that his attorney's failure to file a motion to set aside the termination hearing or a modification petition amounted to ineffective assistance. Fundamental to both of appellant's arguments is his claim that his due process right to notice was violated.

Ordinarily at a section 366.26 hearing family preservation is no longer the goal of California's juvenile dependency law. Family preservation is of critical importance from the time the minor is removed from parental custody (§ 202, subd. (a)) through the reunification period. However, once reunification efforts cease, the scale tips away from

a parent's interest in maintaining family ties and towards the child's interest in permanence and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310.) At that point, adoption becomes the preferred permanent plan. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1344.)

By the same token, the interest of a parent in the companionship, care, custody, and management of his children is a compelling one, ranked among the most basic of civil rights. The state, before depriving a parent of this interest, must afford him adequate notice and an opportunity to be heard. (*In re B. G.* (1974) 11 Cal.3d 679, 688-689.) The means employed to give notice must be such as one, desirous of actually informing the absentee, might reasonably adopt to accomplish it. (*In re Antonio F.* (1978) 78 Cal.App.3d 440, 450.)

II. ***No Due Diligence***

In order for the juvenile court's orders leading up to the section 366.26 hearing to be accorded finality, there is a "fundamental requirement of due process," that is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. (*In re Emily R.* (2000) 80 Cal.App.4th 1344, 1351; citing *Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306, 314.)

Where, as in this case, the Department alleged appellant's whereabouts to be unknown, the issue becomes whether due diligence was used to locate him. (*In re Emily R., supra,* 80 Cal.App.4th at p. 1352; citing *Mullane v. Central Hanover Tr. Co., supra,* 339 U.S. at pp. 317 & 319.) The term reasonable or due diligence, as used to justify service by publication, denotes a thorough, systematic investigation and inquiry conducted in good faith.[3] Where the party conducting the investigation ignores the most

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[3] Here it is undisputed there was no resort to publication as a means of serving notice on appellant.

likely means of finding the defendant, the service is invalid even if the affidavit of diligence is sufficient. (*In re Arlyne A.* (2000) 85 Cal.App.4th 591, 598.)

Appellant argues the mother withheld information while the Department blames appellant because he was frequently on the road and therefore his address was not reasonably ascertainable (*In re Emily R., supra,* 80 Cal.App.4th at p. 1353). On the record before us, we conclude, as discussed below, the Department failed to show it used due diligence to locate appellant.

Preliminarily, we observe that never once throughout these proceedings did the court make any finding that either appellant's whereabouts were unknown or the Department made a diligent search for appellant. It also never conducted its own inquiry into appellant's identity and location as required by statute (§ 316.2). In fact, the only times before the fall of 2001 that the court even mentioned appellant was at the November 2000 dispositional hearing when it denied services to him based on his alleged father status and in June 2000 when it authorized service by publication even though the Department never offered a declaration of due diligence. We point out these omissions because this is not a case in which prior findings were made and therefore were presumably correct unless appellant could show otherwise.

Particularly troubling, in light of appellant's undisputed testimony, is the lack of evidence regarding what inquiry the Department made of N.S.'s mother about appellant. The record is silent on this point. According to appellant's testimony, the mother knew his family, that they lived in the Camas/Vancouver area, and how to reach appellant's grandmother, if not appellant. The grandmother's telephone number was listed throughout this period. However, there is no indication in the record that the Department ever inquired of N.S.'s mother regarding appellant's relatives or friends, let alone why she thought he might be living in Washington.

Identifying family or friends who could assist in locating a father is an obvious step in showing due diligence. (See *In re B.G., supra,* 11 Cal.3d at 689.) Even the

Department's declaration of parent search form is testiment to this common sense. As mentioned earlier, the form includes the statement: "[t]he following attempts were made to locate the party through relatives, friends or others likely to know the present whereabouts of the party." That portion of the form was regrettably left blank when the Department's social worker executed the sole declaration used in this case.

While the Department concentrates its argument on the letters it mailed to Washington state agencies to establish its diligence, the first step, that is what inquiry it made of the mother, is utterly lacking. Consequently, it failed to establish that it pursued the most likely means of finding the defendant. (*In re Arlyne A., supra,* 85 Cal.App.4th at p. 598.) Whether the mother was forthcoming or would have been so is not properly before us since there is no record to evaluate in this regard.

We also note the record leaves unanswered a number of other questions about the Department's diligence. For instance, appellant testified of his employment over the years, yet the Department, according to its own showing, only checked once in July 2000, in "SS/SSI Records." In addition, the one declaration of parent search in the record refers to checking Fresno County telephone and address directories. However, given the mother's belief that he might be living in Washington, one has to question why the Department did not check directories from Washington state for appellant. Along the same lines, the Department learned early on in the course of its July 2000 parent search that appellant had a recent mailing address in Vancouver, Washington. Yet, there is no showing that this discovery triggered any further inquiry of the mother or caused the Department to follow up and check records in that particular part of Washington state.

Even in June 2001, once agencies in Washington state supplied the Department with what turned out to be the residential address of appellant's father as well as appellant's mailing address, the Department still took no action to serve appellant with notice until after he contacted the Department. Even then the social worker initially gave appellant the wrong section 366.26 hearing date. The Department's social worker also

made no effort to notify appellant of on-going hearings in N.S.'s case. Indeed, as county counsel once candidly admitted, despite appellant's requests for telephone contact or visitation with N.S., the social worker appeared to "have been putting him off."

Perhaps the most damning evidence which precludes a finding of due diligence in this case is the fact that apparently the family support division of the Fresno County District Attorney's Office did locate appellant through his father's residence. It was that agency's correspondence to appellant which led to his appearance in this case. In other words, another agency could locate appellant. Why could the Department not do the same? Again, the record does not offer any answers or explanations.

With particular respect to the Department's effort to shift the blame to appellant, we reject its reliance on this court's decision in *In re Emily R., supra*. In *Emily R., supra,* 80 Cal.App.4th at p. 1353, we acknowledged that due process does not require impracticable searches. However, the circumstances in *Emily R.* were factually and legally distinguishable from the present case. In *Emily R.*, an alleged father whose parental rights had been terminated attacked the use of notice by publication. He argued the agency involved failed to exercise due diligence, ignoring the most likely means of finding him. Unlike the situation in this case, the *Emily R.* trial court repeatedly made findings which were presumptively correct that the alleged father's whereabouts were unknown and that reasonable efforts had been made to locate and notify him. (*In re Emily R., supra,* 80 Cal.App.4th at p. 1348-1349.) Also, the alleged father in *Emily R.*, unlike appellant here, offered no evidence that the agency could have ascertained his current address.

Given the Department's failure to establish that it exercised due diligence to locate appellant, the juvenile court could not properly proceed with the section 366.26 hearing and terminate parental rights. As further discussed below, in light of the undisputed evidence that appellant qualified as a presumed father, the court's error was prejudicial.

III. ***Paternity***

Family Code section 7611, subdivision (d) provides that a man is presumed to be a child's father if he "receives the child into his home and openly holds out the child as his natural child." There is a significant distinction between presumed and alleged fathers in a dependency case. Presumed fathers have a right to reunification services; alleged fathers do not. (*Adoption of Michael H.* (1995) 10 Cal.4th 1043, 1051; *In re Emily R., supra,* 80 Cal.App.4th at pp. 1354-1355.)

Here, the facts presented were sufficient to establish that appellant was N.S.'s presumed father under Family Code section 7611, subdivision (d). (*Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570, 585-586.) He received N.S. into his home in the summer of 1999 and also helped provide a home for her on at least two prior occasions. He openly held out N.S. as his natural child, starting shortly after her birth when the mother contacted him and asked for help. He never disputed the mother's decision to name him as N.S.'s father on the birth certificate. Later, he even applied with the State of Washington for medical benefits for N.S. Once he learned of these proceedings and contacted the social worker, he repeatedly referred to himself as the child's father, to N.S. as "my daughter," spoke of his love for her, and his regret over letting the mother take her back in 1999.

Respondent nevertheless contends appellant was nothing more than an alleged father. The Department criticizes appellant because he did not formally initiate a parentage proceeding under section 316.2, seek to establish paternity by blood test, or sign a voluntary declaration of paternity. Respondent also focuses on the evidence that appellant did not financially support N.S., he took her into his home for only three months and at the end of that period allowed the mother take her away despite his prior concerns that the mother was abusing drugs and not providing N.S. adequate care.

We reject respondent's assumption that the juvenile court either did or could find appellant was only an alleged father. The fact that the father did not formally initiate a

parentage proceeding under section 316.2 or sign a voluntary declaration of paternity is irrelevant under the circumstances of this case. Indeed, respondent's argument is disingenuous in this regard. Under section 316.2, subdivision (b), it was either the court's or the Department's duty to give appellant notice of his rights and his ability to admit or deny parentage, by providing him with Judicial Council form JV-505.[4] The form which is entitled "STATEMENT REGARDING PATERNITY" includes such options as "I do not know if I am the father of the child and I [blank] consent to [blank] request blood or DNA testing to determine whether or not I am the father[,]" "I believe I am the child's father and request that the court enter a judgment of paternity[,]" and "I have already established paternity of the child by . . . A voluntary declaration signed by me . . . ." On the reverse side of the Judicial Council form, there is also notice to an alleged father that "If you wish the court to determine paternity or if you wish to admit that you are the father of the child, complete this form according to your intentions." However, there is no indication in the record that appellant was ever served with such notice. Moreover, appellant's participation in these proceedings, albeit belated, is testament to his willingness to declare his paternity. Indeed, respondent's further criticism of appellant for not seeking to blood test ignores the evidence that he volunteered to blood test.

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[4] Section 316.2, subd. (b) provides:

> "If, after the court inquiry, one or more men are identified as an alleged father, each alleged father shall be provided notice at his last and usual place of abode by certified mail return receipt requested alleging that he is or could be the father of the child. The notice shall state that the child is the subject of proceedings under Section 300 and that the proceedings could result in the termination of parental rights and adoption of the child. Judicial Council form Paternity-Waiver of Rights (JV-505) shall be included with the notice. Nothing in this section shall preclude a court from terminating a father's parental rights even if an action has been filed under Section 7630 or 7631 of the Family Code."

Respondent's reliance on appellant's failure to financially support N.S. as well as the fact that he took her into his home for only three months and then allowed the mother to take her away despite his prior concerns is also irrelevant to the issue of presumed father status under Family Code section 7611, subdivision (d). Even appellant acknowledged he should have done more for N.S. Such evidence still does not undercut the undisputed evidence, however, that appellant received her into his home and openly held out N.S. as his natural child.

Respondent's reliance on *In re Ariel H.* (1999) 73 Cal.App.4th 70 is also misplaced. *Ariel H., supra,* involved an adoption action which a 15-year-old alleged father sought to prevent. Notably, the alleged father in *Ariel H.* presented no evidence that he was entitled to presumed father status under Family Code section 7611, subdivision (d). In fact, he never saw the child nor did he publicly acknowledge his paternity. He instead tried to excuse his inaction by citing his own minority, an argument which the appellate court rejected. (*In re Ariel H., supra,* 73 Cal.App.4th at p. 74.) Unlike the alleged father in *Ariel H.*, appellant "promptly attempt[ed] to assume his parental responsibilities as fully as the mother [would] allow." (*In re Ariel, supra,* 73 Cal.App.4th at 73, quoting *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 849.)

In reviewing this record, we are struck by the fact that in so many instances a finding of presumed father status is supported by a fraction of the evidence presented here. We have no doubt that had the appellant appeared in these proceedings at an earlier stage, no court would have hesitated to grant him presumed father status on the undisputed showing he made. What motivated the court in this case is anyone's guess and frankly irrelevant given that our review extends to the court's actions and not its reasoning (*Mancuso* v. *Southern Cal. Edison Co.* (1991) 232 Cal.App.3d 88, 95). In any event, we conclude the violation of appellant's due process rights was prejudicial given the undisputed evidence entitling him to presumed father status under Family Code section 7611, subdivision (d).

DISPOSITION

The order terminating parental rights is reversed. The matter is remanded to the trial court with directions to enter an order declaring appellant to be the presumed father of N.S. and conduct further proceedings to resolve appellant's request for placement and, in the alternative, to order reunification services for his and N.S.'s benefit (see §§ 361.2 & 361.5).